

**Cause No. PD-0787-18**

**DEMOND FRANKLIN**

§

**COURT OF**

FILED

COURT OF CRIMINAL APPEALS

7/31/2018

DEANA WILLIAMSON, CLERK

**VS.**

§

**CRIMINAL APPEALS**

§

**STATE OF TEXAS**

§

**OF TEXAS**

**MOTION TO AMEND APPELLANT'S**  
**PETITION FOR DISCRETIONARY REVIEW**

TO THE HONORABLE COURT OF APPEALS:

COMES NOW, appellant, DEMOND FRANKLIN, who, by and through his appellate counsel of record, Mr. Dean A. Diachin, and pursuant to TEX. R. APP. P. 68.10, does hereby respectfully move this Honorable Court for leave to amend appellant's petition for discretionary review [PDR] filed July 27, 2018, and in support thereof would show this Honorable Court the following:

**I. Procedural History.**

This is an appeal from a conviction of one count of capital murder wherein the death penalty was waived voluntarily by the State. Though the record contains no evidence of the defendant's age at the time of the offense, the trial court assessed penalty at life without the possibility of parole. This sentence, in Cause No. 2015-CR-6149A, styled *State of Texas v. Demond Franklin*, was pronounced on December 12, 2016 in the 290<sup>th</sup> Judicial District Court of Bexar County, Texas, the Hon. Melisa Charmaine Skinner presiding.

Despite a record with no evidence of appellant's age at the time of the offense, the court of appeals filed a memorandum opinion affirming appellant's conviction and sentence on June 27, 2018. Appellant's motion for en banc reconsideration was filed on July 16, 2018 and denied on July 20, 2018. TEX. R. APP. P. 49.7 (West 2017). Appellant timely filed a petition for discretionary on July 27, 2018 and the instant motion to amend that petition on July 31, 2018. TEX. R. APP. P. 68.2 (West 2017).

## **II. Reason for Amendment.**

After filing appellant's PDR, appellate counsel discovered a few minor errors in word choice, verb tense, and typography. All told, appellant's amended brief consists of exactly thirty-four [34] additional words. None of the edits significantly changes the structure or content of appellant's initial argument. Out of an abundance of caution, appellate counsel simply wishes to present the most clear, effective, & reader-friendly work-product possible.

## **III. Prayer**

WEREFORE, PREMISES CONSIDERED, appellant respectfully requests this Honorable Court grants the instant Motion to Amend Appellant's Petition for Discretionary Review, and accepts appellant's amended petition for discretionary review, also filed this date, in lieu of the petition counsel filed on July 27, 2018.

Respectfully submitted,

/s/ Dean A. Diachin

DEAN A. DIACHIN

Bexar County Assistant Public Defender

Paul Elizondo Tower

101 W. Nueva St., Suite 370

San Antonio, Texas 78204

Phone: (210) 335-0701

Fax: (210) 335-0707

Bar No. 00796464

Dean.Diachin@bexar.org

ATTORNEY FOR APPELLANT.

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Second Motion to Amend Appellant's Brief has been emailed to the: (1) Bexar County District Attorney's Office, Appellate Division, 101 W. Nueva St., San Antonio, TX 78205; and (2) State Prosecuting Attorney's Office, 209 W. 14<sup>th</sup> Street, Austin, TX 78701 on July 31, 2018.

/s/ Dean A. Diachin

DEAN A. DIACHIN

Bexar County Assistant Public Defender.